

2009 APR -2 PM 4:27

CLERK McCarthy
SO. DIST. OF GA.

CV 108-142
(Formerly CR 107-129)

ORDER

After a careful, *de novo* review of the file, the Court concurs with the Magistrate Judge's Report and Recommendation, to which no objections have been filed. Accordingly, the Report and Recommendation of the Magistrate Judge is **ADOPTED** as the opinion of the Court.¹ Therefore, Petitioner's § 2255 motion is **GRANTED** as to the out-of-time appeal, and **DISMISSED** without prejudice as to all other claims. Petitioner's judgment in the underlying criminal case is **VACATED**. (CR 107-129, doc. no. 63). Simultaneous with the entry of this Order, the Court is entering a new Judgment and Commitment Order ("J & C") that reimposes the same sentence, identical in all respects to the original J & C (*id.*), save

'Petitioner filed two motions for clarification concerning the government's response to Petitioner's petition prior to receiving the Report and Recommendation. The issues raised in Petitioner's motions for clarification (how to proceed since the government agreed that he was entitled to an out-of-time appeal) were directly addressed in the Report and Recommendation that is now the opinion of this Court. Therefore, the **CLERK** is **DIRECTED** to terminate Plaintiff's motions for clarification (doc. nos. 6, 7) from the pending motions report.

only for the date of entry.

Petitioner is **HEREBY ADVISED** that with the entry of the new J & C, he shall have all the rights associated with an appeal from any criminal sentence. The Court also specifically advises Petitioner that the entry of the new J & C creates a ten-day period within which Petitioner may prosecute a direct appeal of his criminal conviction. Thus, Petitioner shall have **ten (10) days** from the date of entry of the J & C to file a notice of appeal.

Finally, the Clerk of Court is **DIRECTED** to **CLOSE** this civil action and **ENTER** an appropriate final judgment in this civil case in favor of Petitioner. This Order and the new J & C shall be served on counsel of record by facsimile and by United States mail.²

SO ORDERED this 2nd day of April, 2009, at Augusta, Georgia.


UNITED STATES DISTRICT JUDGE

²The Court notes that Attorney Christopher James Hudson has been appointed, under the Criminal Justice Act, to represent Petitioner on direct appeal. (CR 107-129, doc. no. 86).